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10/029,832

12/27/2001

Jack E. Haken

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03/30/2010

PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

PLUCINSKI, JAMISUE A

ART UNIT

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3629

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PAPER

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1 UNITED STATES PATENT AND TRADEMARK OFFICE

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4 BEFORE THE BOARD OF PATENT APPEALS
5 AND INTERFERENCES
6

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8 *Ex parte* JACK E. HAKEN
9

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11 Appeal 2009-009108
12 Application 10/029,832
13 Technology Center 3600
14

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16 Decided: March 29, 2010
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19 Before MURRIEL E. CRAWFORD, HUBERT C. LORIN, and
20 ANTON W. FETTING, *Administrative Patent Judges*.
21 FETTING, *Administrative Patent Judge*.

22 DECISION ON APPEAL
23

1 STATEMENT OF THE CASE

2 Jack E. Haken (Appellant) seeks review under 35 U.S.C. § 134 (2002) of
3 a final rejection of claim 13, which along with claims 1-7, 10, and 14 whose
4 rejections were withdrawn are the only claims pending in the application on
5 appeal.

6 We have jurisdiction over the appeal pursuant to 35 U.S.C. § 6(b)
7 (2002).

8 SUMMARY OF DECISION¹

9 We AFFIRM.

10 THE INVENTION

11 The Appellant invented a method and system that coordinates time and
12 position information, including the geographic position of a wireless device
13 which is used to place an order, with route and delivery system information
14 to allow dynamic delivery of fast food, personal items or other goods and
15 services to customers who are walking, driving, or traveling (Specification
16 2:6-10).

17 An understanding of the invention can be derived from a reading of
18 exemplary claim 13, which is reproduced below [bracketed matter and some
19 paragraphing added].

¹ Our decision will make reference to the Appellant's Appeal Brief ("App. Br.," filed January 10, 2006) and the Examiner's Answer ("Ans.," mailed December 9, 2008), and Final Rejection ("Final Rej.," mailed December 7, 2005).

1 13. Electrical signals transmitted on a cellular wireless
2 communication system that are modulated with information to
3 implement the sending and receiving steps of claim 1.

5 THE REJECTION^{2,3}

6 Claim 13 stands rejected under 35 U.S.C. §101 as being directed towards
7 non-statutory subject matter.

8 ISSUE

9 The issue of whether the Examiner erred in rejecting claim 13 under 35
10 U.S.C. § 101 as being directed toward non-statutory subject matter turns on
11 whether claim 13 recites a transitory propagating signal per se.

FACTS PERTINENT TO THE ISSUES

12

13 The following enumerated Findings of Fact (FF) are believed to be
14 supported by a preponderance of the evidence.

15 *Facts Related to Appellant's Disclosure*

01. The specification describes that a customer uses a wireless data terminal to place an order with a food company (Specification 8:16-17). The customer's terminal exchanges messages with a

² The Examiner has withdrawn the previously asserted rejection of claims 1-8, 10, 11, 13, and 14 under 35 U.S.C. § 103(a) as unpatentable over Ohler and Kraisser (Ans. 3). The Examiner has also withdrawn the previously asserted rejection of claim 6 under 35 U.S.C. § 103(a) as unpatentable over Ohler, Kraisser, and O'Meara (Ans. 3).

³ We note that the only remaining rejection is the rejection of claim 13 under 35 U.S.C. § 101 (Ans. 3).

1 server (Specification 8:17-20). The server queries its database
2 determine whether the customer's request can be satisfied
3 (Specification 9:4-5). The server further monitors the status of the
4 order and the locations of the customer and a delivery person
5 (Specification 11:6-8).

6 PRINCIPLES OF LAW

7 *Patentable Subject Matter*

8 Transitory embodiments are not directed to statutory subject matter.
9 Examples include physical but transitory forms of signal transmission such
10 as radio broadcasts, electrical signals through a wire, and light pulses
11 through a fiber-optic cable, that convey encoded information. *In re Nuijten*,
12 500 F.3d 1346, 1353-54 (Fed. Cir. 2007).

13 ANALYSIS

14 *Claim 13 rejected under 35 U.S.C. §101 as being directed towards non-* 15 *statutory subject matter*

16 The Examiner found that claim 13 recites an electrical signal that
17 contains information and a signal by itself is non-statutory subject matter
18 (Ans. 4). The Appellant contends that the recited data modulated signal can
19 be perceived through the use of suitable circuitry such as a cellular telephone
20 and therefore is statutory subject matter (App. Br. 8).

21 We disagree with the Appellant's argument. Claim 13 recites "electrical
22 signals transmitted on a cellular wireless communication system." The
23 specification is silent as to a specific definition for an electrical signals
24 transmitted on a cellular wireless communication system. Under the

broadest reasonable construction claim these electrical signals are transitory propagating signals *per se*. A signal does not fit within at least one of the four statutory subject matter categories under 35 U.S.C. § 101. *In re Nuijten*, 500 F.3d at 1357. As such, the Appellant has not satisfied the burden of showing that the Examiner erred in rejecting claim 13 under 35 U.S.C. § 101.

CONCLUSIONS OF LAW

The Examiner did not err in rejecting claim 13 under 35 U.S.C. § 101 as being directed toward non-statutory subject matter.

DECISION

To summarize, our decision is as follows.

- The rejection of claim 13 under 35 U.S.C. § 101 as being directed toward non-statutory subject matter is sustained.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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Appeal 2009-009108
Application 10/029,832

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